

8 Official Opinions of the Compliance Board 107 (2012)

- ◆ **Administrative Function** – *Within Exclusion, discussion of:*
 - ◇ overseeing audit staff, to the extent that the discussion involves current operation, not future policy

*Topic headings correspond to those in the Opinions Index (2010 edition) at <http://www.oag.state.md.us/opengov/openmeetings/appf.pdf>

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Maryland Transportation Authority Craig O'Donnell, Kent County News

We have considered the complaint of Craig O'Donnell that the Maryland Transportation Authority's Finance Committee, a public body, violates the Open Meetings Act ("the Act") whenever a quorum of its members attends meetings of the Authority's Audit Committee without giving notice of a meeting of either committee. The two committees discuss the business of the Authority and are composed of the same three members. Neither committee includes a quorum of the Authority's members.

The complaint raises two questions: first, whether the Audit Committee is itself a public body, and, second, whether the business of the Finance Committee is considered, or functions of that committee performed, at meetings of the Audit Committee. The Authority's explanation of the Audit Committee's work causes us to raise a third question of our own accord: whether, in any event, the function performed by the Audit Committee falls within the Act. Specifically, if the functions performed by the Audit Committee were "administrative," as that term is defined by the Act, they did not fall within the Act, and their meetings to perform that work would not be subject to it. *See* State Government Article ("SG") § § 10-502 (b), 10-503(a)(1)(i); *see also* 6 *OMCB Opinions* 23, 24-25 (2008) (explaining the "administrative function" exclusion). We only have the authority to address violations of the Act.¹

First, we conclude that the Audit Committee is not a public body under any of the definitions set forth in State Government Article ("SG") 10-502(h). We base our conclusion on the facts that the Audit Committee was not created by formal resolution and is a subcommittee of the

¹ There is one exception to the administrative exclusion: under SG § 10-503(c)(3), a public body that closes a public meeting to perform an administrative function must include certain information about the meeting in the minutes of its next meeting. That exception is not relevant here.

Authority. *See 7 OMCB Opinions* 176, 179 (2011) (setting forth the tests for a “public body”; applying the “subcommittee exception” to another Authority committee not created by resolution).

Next, we turn to the more complicated question of whether the attendance by a quorum of the Finance Committee at an Audit Committee meeting turns the meeting into a Finance Committee meeting within the scope of Act. As explained below, we conclude that the Audit Committee’s meetings are not subject to the Act (and thus do not violate it) so long as its members perform only the functions particular to that committee and do not perform any Finance Committee functions that fall within the Act. The Audit Committee activities described to us by the Authority appear to meet that requirement.

Normally, the attendance by a quorum of a public body at another entity’s event is not deemed a meeting of the public body itself unless its members use the occasion to interact on the public body’s own business. *See 8 OMCB Opinions* 19, 23-25 (2012) (reviewing earlier Compliance Board matters in which a public body had attended another entity’s event). For example, we concluded that the attendance of quorums of various local election boards at a Maryland Association of Election Officials conference did not violate the Act so long as each board did not separately consider its own business. *See 1 OMCB Opinions* 120, 121 (1995). When the two entities are committees of the same parent body and have the same members, however, it is not so easy to distinguish one committee’s business from that of the other.

The Audit Committee, states the Authority, “meets quarterly with the [Authority’s] office of Audits staff to discuss the status and hear the results of the work performed by that staff to ensure [that the Authority] maintains best practices in its operations.” Further,

The Audit Committee reviews any audits conducted and reports prepared by [the Authority’s] internal auditors. The Audit Committee reviews the findings and recommendations regardless of the subject matter. It reviews the reports to determine whether any major issues exist within the agency and hears from the management staff regarding its progress on responding to audit findings.

The Authority also states that the Audit Committee does not “make decisions for the agency; does not direct policy for the agency; does not have the authority to approve any agenda items; and does not have the authority to recommend that [the Authority’s] Board approve any items.”

In short, the Audit Committee exercises oversight responsibility for the performance of the Authority’s auditing and management staff. In 6

OMCB Opinions 23 (2008), we considered whether a county school board's meeting to receive information from its internal auditing staff on an ongoing audit of performance issues fell within the administrative exclusion. We reviewed the scope of the administrative exclusion and explained that "[i]f a matter is an administrative function . . . , it is excluded from the Act, no matter how important the matter might be considered or how keen the public interest in it." *Id.* at 25-26. We noted that the school board was carrying out its statutory oversight authority for "any unit within the school system ultimately accountable to the board," and that we "had no reason to believe that the scope of discussion went beyond reviewing current operations or that the discussion resulted in any suggested changes in policy." We concluded that the school board had met to perform an administrative function excluded from the Act under SG § 10-503(a)(1)(i). In 3 *OMCB Opinions* 122 (2001), we considered whether a library committee, itself a public body, was performing an administrative function when it was carrying out or implementing its "responsibility for overseeing the Library's financial and accounting systems" Summarizing the "key points" of the administrative exclusion, we explained that:

A matter is excluded if it involves the implementation of an existing law or policy and, conversely, involves no part of the process by which new law or policy is created. The exclusion may not be invoked for any aspect of the policy-making process, including the identification of a matter ripe for policy consideration, a briefing about a policy-related issue, and staff recommendations on alternatives to be considered.

Id. at 124-25. Applying this standard, we found that the committee was performing an administrative function when it conducted the activities described to us.

The principles and results in 6 *OMCB Opinions* 23 and 3 *OMCB Opinions* 122 apply here. Like the school board and library committee in those matters, the Audit Committee exercises an oversight function within the administrative exclusion, not a policy-making function. The question then is whether the Finance Committee does its work in Audit Committee meetings without giving public notice.

The Authority explains that the Finance Committee addresses investment issues, including such issues as the Authority's debt policy, the propriety of investments, the level of risk, and the control of costs. The Authority states that these matters are not discussed by the Audit Committee. Especially given the committees' separate roles, we have no reason to disbelieve that statement.

In conclusion, so long as the Audit Committee performs only administrative tasks, its activities are not subject to the Act, and it does not matter that it is composed of a quorum of Finance Committee members. However, if the discussion strays into any of the policy-related, or quasi-legislative, areas within the purview of the Finance Committee, the session will be deemed a session of the Finance Committee itself, a public body subject to the Act. The Audit Committee did not violate the Act when it performed the tasks described here.

Open Meetings Compliance Board

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